

clause, the Seller and any Seller's subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Seller and any Seller's subcontractor shall be liable for the unpaid wages. In addition, such Seller and Seller's subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) Withholding for unpaid wages and liquidated damages. FERMCO shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Seller or Seller's subcontractor under any such contract or any other FERMCO contract with the same Seller, or other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Seller, such sums as may be determined to be necessary to satisfy any liabilities of such Seller or Seller's subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) Payrolls and basic records. (1) The Seller or Seller's subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Seller or Seller's subcontractor for inspection, copying, or transcription by authorized representatives of FERMCO or the Department of Labor. The Seller or Seller's subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) Subcontracts. The Seller shall insert in any subcontracts the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Seller shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

B.5 FAR 52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (APPLIES ONLY TO MULTIPLE YEAR AND OPTION CONTRACTS) (MAY 1989)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

(b) The Seller warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

(d) The contract price or contract unit price labor rates will be adjusted to reflect the Seller's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Seller as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Seller chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Seller voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour.

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Seller shall notify FERMCO of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by FERMCO. The Seller shall promptly notify FERMCO of any decrease under this clause, but nothing in the clause shall preclude FERMCO from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Seller shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) FERMCO or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Seller until the expiration of 3 years after final payment under the contract.

SECTION C
SECTION C APPLIES IF THE PRICE OF THIS CONTRACT EXCEEDS \$10,000

C.1 FAR 52.222-20 WALSH-HEALEY PUBLIC CONTRACTS ACT (APR 1984)

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

(a) All representations and stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

C.2 FAR 52.222-26 EQUAL OPPORTUNITY (APR 1984)

NOTE: This clause is applicable unless all of the terms of the clause are exempt from the requirements of EO 11246. (See Federal Acquisition Regulation (FAR) 22.807 (a)):

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Seller has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Seller shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Seller shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Seller agrees as follows:

(1) The Seller shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Seller shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Seller shall post in conspicuous places available to employees and applicants for employment the notices to be provided by FERMCO that explain this clause.

(4) The Seller shall, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Seller shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by FERMCO advising the labor union or workers' representative of the Seller's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Seller shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Seller shall furnish to FERMCO all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed with 12 months preceding the date of award.

(8) The Seller shall permit access to its books, records, and accounts by FERMCO or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Seller's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determines that the Seller is not in compliance with this clause or any rule, regulation or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Seller may be declared ineligible for further FERMCO contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Seller as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Seller shall include the terms and conditions of subparagraph (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Seller shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Seller becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Seller may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

C.3 FAR 52.222-35 AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS (APR 1984)

(a) Definitions. "Appropriate office of the State employment service system," as used in this clause, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the

Trust Territory of the Pacific Islands.

Openings that the Seller proposes to fill from within its own organization," as used in this clause, means employment openings for which no one outside the Seller's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Seller proposes to fill from regularly established "recall" lists.

"Openings that the Seller proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this clause, means employment openings that the Seller proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

"Suitable employment openings," as used in this clause—

(1) Includes, but is not limited to, openings that occur in jobs categorized as—

- (i) Production and nonproduction;
- (ii) Plant and office;
- (iii) Laborers and mechanics;
- (iv) Supervisory and non-supervisory;
- (v) Technical; and
- (vi) Executive administrative, and professional positions compensated on a salary basis of less than \$25,000 a year; and

(2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Seller proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) General.

(1) Regarding any position for which the employee or applicant for employment is qualified, the Seller shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Seller agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Seller agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) Listing openings.

(1) The Seller agrees to list all suitable employment openings existing at contract award or occurring during contract performance,

at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Seller's facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.

(3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. The listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Seller from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Seller becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Seller is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Seller may advise the State system when it is no longer bound by this contract clause.

(5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) FERMCO's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in FERMCO's interest.

(d) Applicability.

(1) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that the Seller proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) Postings.

(1) The Seller agrees to post employment notices stating (i) the Seller's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through FERMCO.

(3) The Seller shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Seller is bound by the terms of the

Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.

(f) Noncompliance.

If the Seller does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) Subcontracts.

The Seller shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Seller shall act as specified by the Director or FERMCO to enforce the terms, including action for noncompliance.

C.4 FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1988)

(a) The Seller shall report at least annually, as required by the Secretary of Labor, on:

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of the Seller by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Seller may select an ending date: (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the Seller has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each Seller subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the Seller. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012.

(f) Subcontracts. The Seller shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

C.5 DOE PR 9-9.110 (c) REPORTING OF ROYALTIES (JUN 1979)

If this contract is in an amount which exceeds \$10,000 and if any royalty payments are directly involved in the contract or are reflected in the contract price to FERMCO, the Seller agrees to report in writing to the Patent Counsel (with notification by Seller to FERMCO) during the performance of this contract and prior to its completion or final settlement, the amount of any royalties or other payments paid or to be paid by it directly to others in connection with the performance of this contract together with the names and addresses of licensors to whom such payments are made and either the patent numbers involved or such other information as will permit the identification of the patents or other basis on which royalties are to be paid. The approval of DOE or FERMCO of any individual payments or royalties shall not stop FERMCO or the Government at any time from contesting the enforceability, validity or scope of, or title to, any patent under which a royalty or payments are made.

C.6 DOE PR 9-9.104 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (JUN 1979)

(a) The Seller shall report to FERMCO promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of this contract of which the Seller has knowledge.

(b) In the event of any claim or suit against the Government or FERMCO on account of any alleged patent or copyright infringement arising out of the performance of this contract or out of the use of any supplies furnished or work or services performed hereunder, the Seller shall furnish to FERMCO when requested by the Contracting Officer or FERMCO, all evidence and information in possession of the Seller pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of FERMCO except where the Seller has agreed to indemnify Fluor Daniel, FERMCO or the Government.

(c) This clause shall be included in all subcontracts.

C.7 FAR 52.215-1 EXAMINATION OF RECORDS BY COMPTROLLER GENERAL (APR 1984)

(a) This clause applies if this contract exceeds \$10,000 and was entered into by negotiation.

(b) The Comptroller General of the United States or a duly authorized representative from the General Accounting Office shall until 3 years after final payment under this contract or for any shorter period specified in Federal Acquisition Regulation (FAR) Subpart 4.7, Contractor Records Retention, have access to and the right to examine any of the Seller's directly pertinent books, documents, papers, or other records involving transactions related to this contract.

(c) The Seller agrees to include in first-tier subcontracts under this contract a clause to the effect that the Comptroller General or a duly authorized representative from the General Accounting Office shall, until 3 years after final payment under the subcontract or for any shorter period specified in FAR Subpart 4.7 have access to and the right to examine any of the subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract.

"Subcontract," as used in this clause, excludes (1) purchase orders not exceeding \$10,000 and (2) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

(d) The periods of access and examination in paragraphs (b) and (c) above for records relating to (1) litigation or settlement of claims arising from the performance of this contract, or (2) costs and expenses of this contract to which the Comptroller General or a duly authorized representative from the General Accounting Office has taken exception shall continue until

such litigation, claims, or exceptions are disposed of.

C.8 FAR 52.215-2 AUDIT-NEGOTIATION (DEC 1989)

(a) **Examination of costs.** The Seller shall maintain and FERMCO or representatives of FERMCO shall have the right to examine and audit books, records, documents, and other evidence and accounting procedures and practices, regardless of form (e.g. machine readable media such as disk, tape, etc.) or type (e.g. data bases, applications software, database management software, utilities, etc.) sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract. This right of examination shall include inspection at all reasonable times of the Seller's plants, or parts of them, engaged in performing the contract.

(b) **Cost or pricing data.** If, pursuant to law, the Seller has been required to submit cost or pricing data in connection with pricing this contract or any modification to this contract, FERMCO or representatives of FERMCO shall have the right to examine and audit all of the Seller's books, records, documents, and other data regardless of form (e.g. machine readable media such as disk, tape, etc.) or type (e.g. data bases, applications software, database management software, utilities, etc.) including computations and projections related to proposing, negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost of pricing data submitted, along with the computations and projections used.

(c) **Reports.** If the Seller is required to furnish cost, funding, or performance reports, FERMCO or representatives of FERMCO shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (1) the effectiveness of the Seller's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(d) **Availability.** The Seller shall make available at its office at all reasonable times the materials described in paragraphs (a) and (b) above, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation, or for any longer period required by statute or by other clauses of this contract. In addition-

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and

(2) Records relating to litigation or the settlement of claims arising under or relating to this contract shall be made available until such litigation or claims are disposed of.

(e) Except as otherwise provided in FAR Subpart 4.7, Contractor Records Retention, the Seller may transfer computer data in machine readable form from one reliable computer medium to another. The Seller's computer data retention and transfer procedures shall maintain the integrity, reliability, and security of the original data. The Seller's choice of form or type of materials described in paragraphs (a), (b) and (c) of this clause affects neither the Seller's obligations nor FERMCO's rights under this clause.

(f) The Seller shall insert a clause containing all the terms of this clause, including this paragraph (f), in all subcontracts over \$10,000 under this contract, altering the clause only as necessary to identify properly the contracting parties and FERMCO.

SECTION D

SECTION D APPLIES IF THE PRICE OF THE CONTRACT EXCEEDS \$25,000

D.1 FAR 52.209-6 PROTECTING FERMCO AND THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH SUBCONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1991)

(a) The Government suspends or debarb subcontractors to protect its interests. The Seller shall not enter into any subcontract in excess of the small purchase limitation at FAR 13.000 with a subcontractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Seller shall require each proposed first-tier subcontractor, whose subcontract will exceed the small purchase limitation at FAR 13.000, to disclose to the Seller, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Government.

(c) A corporate officer or a designee of the Seller shall notify FERMCO, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Procurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Seller's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Procurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Procurement Programs.

(4) The systems and procedures the Seller has established to ensure that it is fully protecting FERMCO's and the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

D.2 FAR 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS (FEB 1990)

(a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its Sellers and subcontractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

(b) The Seller hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Seller further agrees to cooperate in any

studies or surveys as may be conducted by the United States Small Business Administration, FERMCO, or the DOE or as may be necessary to determine the extent of the Seller's compliance with this clause.

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern (1) which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124. The Seller shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8 (a) of the Small Business Act. The Seller shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

(d) Sellers acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

D.3 FAR 52.219-13 UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES (AUG 1986)

(a) "Women-owned small businesses," as used in this clause, means small business concerns that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.

"Control," as used in this clause, means exercising the power to make policy decisions.

"Operate," as used in this clause, means being actively involved in the day-to-day management of the business.

"Small business concern," as used in this clause, means a concern including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on FERMCO contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) It is the policy of the United States that women-owned small businesses shall have the maximum practicable opportunity to participate in performing contracts awarded by any Federal agency.

(c) The Seller agrees to use its best efforts to give women-owned

small businesses the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with the efficient performance of its contract.

(d) The Seller may rely on written representations by its subcontractors regarding their status as women-owned small businesses.

D.4 FAR 52.220-3 UTILIZATION OF LABOR SURPLUS AREA CONCERNS (APR 1984)

(a) **Applicability.** This clause is applicable if this contract exceeds the appropriate small purchase limitation in Part 13 of the Federal Acquisition Regulation.

(b) **Policy.** It is the policy of FERMCO to award contracts to concerns that agree to perform substantially in labor surplus areas (LSA's) when this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Seller agrees to use its best efforts to place subcontracts in accordance with this policy.

(c) **Order of preference.** In complying with paragraph (b) above and with paragraph (c) of the clause of this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns," the Seller shall observe the following order of preference in awarding subcontracts:

- (1) small business concerns that are LSA concerns,
- (2) other small business concerns, and
- (3) other LSA concerns.

(d) **Definitions.** "Labor surplus area," as used in this clause, means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

"Labor surplus area concern," as used in this clause, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

D.5 FAR 52.232-17 INTEREST (JAN 1991)

(a) Notwithstanding any other clause of this contract, all amounts, except amounts that are repayable and which bear interest under a Price Reduction for Defective Cost or Pricing Data clause, that become payable by the Seller to FERMCO under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury, which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) Amounts shall be due at the earliest of the following dates:

- (1) The date fixed under this contract.
- (2) The date of the first written demand for payment

consistent with this contract, including any demand resulting from a default termination.

(3) The date FERMCO transmits to the Seller a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.

(4) If this contract provides for revision of prices, the date of written notice to the Seller stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.

(c) The interest charge made under this clause may be reduced under the procedures prescribed in 32.614-2 of the Federal Acquisition Regulation in effect of the date of this contract.

D.6 FAR 52.242-13 BANKRUPTCY (APR 1991)

In the event the Seller enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Seller agrees to furnish, by certified mail, written notification of the bankruptcy to the FERMCO President. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of FERMCO Contract numbers and contracting offices for all FERMCO contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

D.7 FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (APR 1984)

(a) "International air transportation," as used in this clause, means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.

"United States," as used in this clause, means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and possessions of the United States.

"U.S. flag air carrier," as used in this clause, means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371).

(b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 1517)(Fly America Act) requires that all Federal agencies, FERMCO and Seller use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.

(c) The Seller agrees, in performing work under this contract, to use U.S.-flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent that services by those carriers is available.

(d) In the event that the Seller selects a carrier other than a U.S.-flag air carrier for international air transportation, the Seller shall include a certification on vouchers involving such transportation essentially as follows:

CERTIFICATION OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

I hereby certify that international air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation); State reasons:.....
(End of certification)

(e) The Seller shall include the substance of this clause, including the paragraph (e), in each subcontract or purchase order under this contract that may involve international air transportation.

D.8 FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (APR 1984)

(a) The Cargo Preference Act of 1954 (46 U.S.C. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are:

(1) Acquired for a U.S. Government Agency account;

(2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;

(3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(4) Acquired with advance of funds, loans, or guarantees made by or on behalf of the United States.

(b) The Seller shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this Contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) above, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.

(c) (1) The Seller shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both (i) FERMCO and (ii) the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590. Subcontractor bills of lading shall be submitted through the Seller.

(2) The Seller shall furnish these bill of lading copies (i) within 20 working days of the date of loading for shipment originating in the United States or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following

information:

- (A) Sponsoring U.S. Government agency.
- (B) Name of vessel.
- (C) Vessel flag of registry.
- (D) Date of loading.
- (E) Port of loading.
- (F) Port of final discharge.
- (G) Description of commodity.
- (H) Gross weight in pounds and cubic feet if

available.

- (I) Total ocean freight revenue in U.S.

dollars.

(d) Except for small purchases as described in 48 CFR 13, the Seller shall insert the substance of this clause, including this paragraph (d), in all subcontracts or purchase orders under this contract.

(e) The requirement in paragraph (a) does not apply to--

- (1) Small purchases as defined in 48 CFR 13;

(2) Cargoes carried in vessels of the Panama Canal Commission or as required or authorized by law or treaty;

(3) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353); and

(4) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from the Division of National Cargo, Office of Market Development, Maritime Administration, U.S. Department of Transportation, Washington, DC 20590. Phone: 202-426-4610.

D.9 FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (SEP 1990)

(a) FERMCO, at its election, may reduce the price of a fixed-price type contract or contract modification and the total cost and fee under a cost-type contract or contract modification by the amount of profit or fee determined as set forth in paragraph (b) of this clause if FERMCO determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the FAR. In the case of a contract modification, the fee subject to reduction is the fee specified in the particular contract modification at the time of execution, except as provided in subparagraph (b)(5) of this clause.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be --

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract.

(3) For cost-plus-award-fee contracts --

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Seller for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, FERMCO may

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, FERMCO may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts or contract modifications, by 10 percent of the initial contract price; 10 percent of the contract modification price; or a profit amount determined by FERMCO from records or documents in existence prior to the date of the contract award or modification.

(c) FERMCO may, at its election, reduce a Seller's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, FERMCO may terminate this contract for default. The rights and remedies of FERMCO specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

D.10 FAR 52.208-1 REQUIRED SOURCES FOR JEWEL BEARINGS AND RELATED ITEMS (APR 1984)

(a) This clause applies only if supplies furnished under this contract contain jewel bearings or related items.

(b) "Jewel bearing," as used in this clause, means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, that has one or more polished surfaces to provide supporting surfaces or low-friction contact areas for revolving, oscillating, or sliding parts in an instrument, mechanism, subassembly, or part. A jewel bearing may be unmounted or may be mounted into a ring or bushing. Examples are watch holes-on-ive, watch hole-straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cups, and double cups.

"Plant," as used in this clause, means the Government-owned, contractor-operated William Langer Plant, Rolla, North Dakota 58367 (Phone: 701-477-3193).

"Price list," as used in this clause, means the U.S. Government Jewel Bearing Price List, published periodically by the General Services Administration for jewel bearings produced by the Plant.

"Related item," as used in this clause, means a piece of synthetic corundum (sapphire or ruby), other than a jewel bearing, that (1) is made from material produced by the Verneuil flame fusion process, (2) has a geometric shape up to a maximum of 1 inch in any dimension, (3) requires extremely close tolerances and highly polished surfaces identical to those involved in manufacturing jewel bearings, and (4) is either mounted in a retaining or supporting structure or unmounted. Examples are window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, and notched plate.

(c) All jewel bearings and related items required for the supplies to be furnished under this contract (or an equal quantity of the same type, size, and tolerances) shall be acquired from the following sources: jewel bearings from the Plant, unless the Plant declines or rejects the order; and related items from domestic manufacturers, including the Plant, if the items can be obtained from those sources. Sources other than the foregoing may be used if the foregoing sources decline or reject the order.

(1) Orders may be placed with the Plant for individual contracts, for a combination of contracts, or for stock. If the order is for an individual contract, the prime contract number DE-ACOS-920R21972 shall be placed on it.

(2) Orders, and any supplements to orders, for items listed in the price list shall refer to the most recent price list and its date.

(3) Requests for quotations for items not listed in the price list should be accompanied by drawings and forwarded to the Plant as soon as possible to ensure prompt quotation or rejection of the order.

(d) At its option, the Plant may decline or reject all or part of a Seller's or Seller subcontractor's order. If the order is declined or rejected, the Seller shall notify FERMCO promptly in writing, enclosing a copy of the rejection notice. Unless the declination or rejection has been caused by current excessive and overdue Seller indebtedness to the Plant as determined by the Plant, FERMCO shall evaluate the impact and make an equitable adjustment in the contract price, in the delivery schedule, or in both, if one is warranted. This procedure shall also apply to orders for related items rejected by any other domestic manufacturer.

(e) The Seller agrees to insert this clause, including this paragraph (e), and the prime contract number in every subcontract unless the Seller has positive knowledge that the subassembly, component, or part being purchased does not contain jewel bearings or related items.

D.11 FAR 52.215-26 INTEGRITY OF UNIT PRICES AND ALTERNATE I (APR 1991)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) The requirement in paragraph (a) of this clause does not apply to any contract or subcontract item of supply for which the unit price is, or is based on, an established catalog or market price for a commercial item sold in substantial quantities to the general public. A price is based on a catalog or market price only if the item being purchased is sufficiently similar to the catalog or market price commercial item to ensure that any difference in price can be identified and justified without resort to cost analysis.

(d) The Seller shall insert the substance of this clause, in all subcontracts.

Alternate I (APR 1991)

Substitute the following paragraph (c) if the contract is not the result of full and open competition.

(c) The Seller shall also identify those supplies which it will not manufacture or to which it will not contribute significant value. This information is not required for commercial items sold in substantial quantities to the general public when the price is, or is based on, established catalog or market prices.

D.12 DEAR 970.5204-58 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (AUG 1992)

(a) Program Implementation. The Seller shall, consistent with 10 CFR Part 707, Workplace Substance Abuse Programs at DOE Sites, incorporated herein by reference with full force and effect, develop, implement, and maintain a workplace substance abuse program.

(b) Remedies. In addition to any other remedies available to FERMCO and the Government, the Seller's failure to comply with the requirements of 10 CFR Part 707 or to perform in a manner consistent with its approved program may render the Seller subject to: the suspension of contract payments, or, where applicable, a reduction in award fee; termination for default; and suspension or debarment.

(c) Subcontracts. (1) The Seller agrees to notify FERMCO reasonably in advance of, but not later than 30 days prior to, the award of any lower-tier subcontract the Seller believes may be subject to the requirements of 10 CFR Part 707.

(2) The Seller shall develop and implement a workplace substance abuse program that complies with the requirements of 10 CFR Part 707, Workplace Substance Abuse Programs at DOE Sites, as a condition for award of the contract. FERMCO shall periodically monitor each Seller's implementation of the program for effectiveness and compliance with 10 CFR Part 707.

(3) The Seller agrees to include, and require the inclusion of, the requirements of this clause in all subcontracts, at any tier, that are subject to the provisions of 10 CFR Part 707.

D.13 FAR 52.222-44 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT - PRICE ADJUSTMENT (MAY 1989)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to Seller collective bargaining agreements.

(b) The Seller warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Seller in wages and fringe benefits to the extent that these increases or decreases are made to comply with -

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (b) of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Seller shall notify FERMCO of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by FERMCO in writing. The Seller shall promptly notify FERMCO of any decrease under this clause, but nothing in the clause shall preclude FERMCO from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that FERMCO may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Seller shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) FERMCO or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Seller.

SECTION E
SECTION E APPLIES IF THE PRICE OF THIS CONTRACT EXCEEDS \$100,000

E.1 FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JAN 1990)

(a) Definitions.

"Agency" as used in this clause, means executive agency as defined in 2.101.

"Covered Federal action," as used in this clause, means any of the following Federal actions:

- (a) The awarding of any Federal contract.
- (b) The making of any Federal grant.
- (c) The making of any Federal loan.
- (d) The entering into of any cooperative agreement.
- (e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (f) The contract award.

"Indian tribe" and "tribal organization" as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan natives.

"Influencing or attempting to influence," as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsors group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:

- (a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.
- (b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.
- (c) A special Government employee, as defined in section 202, title 18, United States Code.
- (d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this clause, means with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this clause, means with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this clause, includes the Seller and all Seller's subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for a least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions.

(1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan, the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Sellers to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

- (i) Agency and legislative liaison by own

employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the quantities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action.

(1) Providing any information not specifically requested by necessary for an agency to make an informed decision about initiation of a covered Federal action:

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of-

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person other than an officer or employee of a person requesting or receiving a covered Federal or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission, or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivision (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) Disclosure.

(1) The Seller who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB Standard Form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Seller shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes-

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Seller shall require the submittal of a certification, and if required, a disclosure form by any person which requests or received any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by Seller. Seller shall submit all disclosures to FERMCO at the end of the calendar quarter in which the disclosure form is submitted by the Seller. Each subcontractor certification shall be retained in the contract file of the Seller.

(d) Agreement. The Seller agrees not to make any payment prohibited by the clause.

(e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent FERMCO from seeking any other remedy that may be applicable.

(2) Sellers may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) Cost allocability. Nothing in this clause makes allowable or reasonable any cost which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

E.2 FAR 52.215-22 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (JAN 1991)

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Seller or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a Seller or prospective subcontractor furnished the Seller cost or pricing data that were not complete, accurate, and current as certified in the Seller's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) above due to defective data from a prospective Seller that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Seller, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Seller; provided that the

actual subcontract price was not itself affected by defective cost or pricing data.

(c) (1) If FERMCO determines under paragraph (a) of this clause that a price or cost reduction should be made, the Seller agrees not to raise the following matters as a defense:

(i) The Seller or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) FERMCO should have known that the cost or pricing data in issue were defective even though the Seller or subcontractor took no affirmative action to bring the character of the data to the attention of FERMCO.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Seller or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by subdivision (c)(2)(ii) of this clause, an offset in an amount determined appropriate by FERMCO based upon the facts shall be allowed against the amount of a contract price reduction if-

(A) The Seller certifies to FERMCO that, to the best of the Seller's knowledge and belief, the Seller is entitled to the offset in the amount requested; and

(B) The Seller proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if-

(A) The understated data was known by the Seller to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) FERMCO proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(d) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Seller shall be liable to and shall pay FERMCO at the time such overpayment is repaid-

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Seller to the date FERMCO is repaid by the Seller at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(A)(2); and

E.3. FAR 52.215-23 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA-MODIFICATIONS (DEC 1991)

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed \$100,000, except that this clause does not apply to any modification for which the price is-

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by Law or regulation.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Seller or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, or (2) a Seller or prospective subcontractor furnished the Seller cost or pricing data that were not complete, accurate, and current as certified in the Seller's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Seller, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the subcontractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d) (1) If FERMCO determines under paragraph (b) of this clause that a price or cost reduction should be made, the Seller agrees not to raise the following matters as a defense:

(i) The Seller or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current costs or pricing data had been submitted.

(ii) FERMCO should have known that the cost or pricing data in issue were defective even though the Seller or subcontractor took no affirmative action to bring the character of the data to the attention of FERMCO.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Seller or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2) (i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by FERMCO based upon the facts shall be allowed against the amount of a

contract price reduction if-

(A) The Seller certifies to FERMCO that, to the best of the Seller's knowledge and belief, the Seller is entitled to the offset in the amount requested; and

(B) The Seller proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if-

(A) The understated data was known by the Seller to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) FERMCO proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(c) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Seller shall be liable to and shall pay FERMCO at the time such overpayment is repaid-

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Seller to the date FERMCO is repaid by the Seller at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621 (a)(2)

E.4 FAR 52.215-24 SUBCONTRACTOR COST OR PRICING DATA (DEC 1991)

(a) Before awarding any subcontract expected to exceed \$100,000, when entered into, or before pricing any Seller modification involving a pricing adjustment expected to exceed \$100,000, the Seller shall require the Seller's subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is-

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulations.

(b) The Seller shall require the Seller's subcontractor to certify in substantially the form prescribed in subsection 15.804-4 of the Federal Acquisition Regulation (FAR) that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds \$100,000, when entered into, the Seller shall insert either-

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-25, Subcontractor Cost or Pricing Data-Modifications.

E.5 FAR 52.215-25 SUBCONTRACTOR COST OR PRICING DATA-MODIFICATIONS (DEC 1991)

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this contract involving a pricing adjustment expected to exceed \$100,000, and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed \$100,000, when entered into, or pricing any subcontract modification involving a pricing adjustment expected to exceed \$100,000, the Seller shall require the Seller's subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless the price is—

(1) Based on adequate price competition;

(2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(3) Set by law or regulation.

(c) The Seller shall require the subcontractor to certify in substantially the form prescribed in subsection 15.804-4 of the Federal Acquisition Regulation (FAR) that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement of the negotiated price of the subcontract or subcontract modification.

(d) The Seller shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds \$100,000, when entered into.

E.6 FAR 52.223-2 CLEAN AIR AND WATER (APR 1984)

NOTE: This clause applies to this contract only if (a) it is expected to exceed \$100,000; (b) a facility to be used has been the subject of a conviction under the applicable portion of the Air Act (42 U.S.C. 7413(c)(1)) on the Water Act (33 U.S.C. 1319(c)); and is listed by Environmental Protection Agency (EPA) as a violating facility; or (c) the acquisition is not exempt under FAR 23.104.

(a) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401, et seq.).

"Clean air standards," as used in this clause means —

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7412(d));

(3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or

(4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act of contained in a permit issued to a discharger by the EPA or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this clause, means compliance with—

(1) Clean air or water standards; or

(2) A schedule or plan ordered or approved by a court of competent jurisdiction, the EPA, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Seller or Seller's subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the EPA, determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this clause, means Clean Water Act (33 U.S.C. 1251, et seq.).

(b) The Seller agrees—

(1) To comply with all the requirements of section 114 of the Clean Air Act (41 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(2) That no portion of the work required by this contract will be performed in a facility listed on the EPA List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

SECTION F
SECTION F APPLIES IF THE PRICE OF THE CONTRACT EXCEEDS \$500,000

F.1 FAR 52.219-9 SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (JAN 1991)

(a) This clause does not apply to small business concerns.

(b) "Commercial product," as used in this clause, means a product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product which, in the opinion of FERMCO, differs only insignificantly from the Seller's commercial product.

"Subcontract," as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by FERMCO and Seller or Seller's subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The Seller, upon request by FERMCO, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns and small disadvantaged business concerns. If the Seller is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns and with small disadvantaged business concerns with a part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by FERMCO. Failure to submit and negotiate the subcontracting plan shall make the Seller ineligible for award of a contract.

(d) The Seller's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns and small disadvantaged business concerns as subcontractors. The Seller shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of -

(i) Total dollars planned to be subcontracted:

(ii) Total dollars planned to be subcontracted to small business concerns; and

(iii) Total dollars planned to be subcontracted to small disadvantaged business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to (i) small business concerns and (ii) small disadvantaged business concerns.

(4) A description of the method used to develop the subcontracting goals in (1) above.

(5) A description of the method used to identify potential

sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small and small disadvantaged business concerns trade associations).

(6) A statement as to whether or not the Seller included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns and (ii) small disadvantaged business concerns.

(7) The name of the individual employed by the Seller who will administer the Seller's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the Seller will make to assure that small business concerns and small disadvantaged business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the Seller will include the clause in this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the Seller will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$300,000 (\$1,000,000 for construction of any public facility), to adopt a plan similar to the plan agreed to by the Seller.

(10) Assurances that the Seller will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow FERMCO to determine the extent of compliance by the Seller with the subcontracting plan, (iii) submit Standard Form (SF) 294, Subcontracting Report, for individual contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms, and (iv) ensure that its subcontractors agree to submit standard Forms 294 and 295.

(11) A recitation of the types of records the Seller will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small and small disadvantaged business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists, guides, and other data that identify small and small disadvantaged business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small or small disadvantaged business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether small disadvantaged business concerns were solicited and if not, why not, and (C) if applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small and small disadvantaged business sources.

(v) Records of internal guidance and encouragement provided to buyers through (A) workshops, seminars, training, etc., and (B) monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the Seller to FERMCO, including the name, address, and business size of each subcontractor. Sellers having company or division-wide annual plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Seller shall perform the following functions:

(1) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Seller's lists of potential small business and small disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small business or small disadvantaged business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Seller's subcontracting plan.

(f) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by (d) above, except goals, may be incorporated by reference as a part of the subcontracting plan required of the Seller by this clause; provided, (1) the master plan has been approved, (2) the Seller provides copies of the approved master plan and evidence of its approval to FERMCO, and (3) goals and any deviations from the master plan deemed necessary by FERMCO to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) (1) If a commercial product is offered, the subcontracting plan required by this clause may relate to the Seller's production generally, for both commercial and noncommercial products, rather than solely to FERMCO's contract. In these cases, the Seller shall, with the concurrence of FERMCO, submit one company-wide or division-wide annual plan.

(2) The annual plan shall be reviewed for approval by DOE through FERMCO which requires a subcontracting plan during the fiscal year, or by an agency satisfactory to FERMCO.

(3) The approved plan shall remain in effect during the

Seller's fiscal year for all of the Seller's commercial products.

(h) Prior compliance of the Seller with other such subcontracting plans under previous contracts will be considered by FERMCO in determining the responsibility of the Seller for award of the contract.

(i) The failure of the Seller or the Seller's subcontractors to comply in good faith with (1) the clause of this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns" or (2) an approved plan required by this clause shall be a material breach of the contract.

F.3 FAR 52.219-16 LIQUIDATED DAMAGES-SMALL BUSINESS SUBCONTRACTING PLAN (AUG 1989)

(a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in the clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled "Small Business and Small Disadvantaged Business Subcontracting Plan," or willful or intentional action to frustrate the plan.

(b) If, at contract completion, or in the case of a commercial products plan, at the close of the fiscal year for which the plan is applicable, the Seller has failed to meet its subcontracting goals and FERMCO decides in accordance with paragraph (c) of this clause that the Seller failed to make good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled "Small and Small Disadvantaged Business Subcontracting Plan," the Seller shall pay FERMCO liquidated damages in an amount stated. The amount of damages attributable to the Seller's failure to comply shall be an amount equal to the actual dollar amount by which the Seller failed to achieve each subcontract goal or, in the case of a commercial products plan, that portion of the dollar amount allocable to FERMCO contracts by which the Seller failed to achieve each subcontract goal.

(c) Before FERMCO makes a final decision that the Seller has failed to make such good faith effort, FERMCO shall give the Seller written notice specifying the failure and permitting the Seller to demonstrate what good faith efforts have been made. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, FERMCO finds that the Seller failed to make a good faith effort to comply with the subcontracting plan, FERMCO shall issue a final decision to that effect and require that the Seller pay FERMCO liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial products plans, i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in this contract entitled "Small Business and Small Disadvantaged Business Subcontracting Plan," FERMCO, who originally approved the plan, will exercise the functions under this clause on behalf of all agencies that awarded contracts covered by that commercial products plan.

(e) The Seller shall have the right of appeal, under the clause of this contract entitled "Disputes."

(f) Liquidated damages shall be in addition to any other remedies that FERMCO may have.

F.3 FAR 52.220-4 LABOR SURPLUS AREA SUBCONTRACTING PROGRAM (APR 1984)

(a) See the Utilization of Labor Surplus Area Concerns clause of this contract for applicable definitions.

(b) The Seller agrees to establish and conduct a program to encourage labor surplus area (LSA) concerns to compete for subcontracts within their capabilities when the subcontracts are consistent with the efficient performance of the contract at prices no higher than obtainable elsewhere. The Seller shall-

(1) Designate a liaison officer who will (i) maintain liaison with authorized representatives of the Government on LSA matters, (ii) supervise compliance with the Utilization of Labor Surplus Area Concerns clause, and (iii) administer the Seller's labor surplus area subcontracting program;

(2) Provide adequate and timely consideration of the potentialities of LSA concerns in all make-or-buy decisions;

(3) Ensure that LSA concerns have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of offers, quantities, specifications, and delivery schedules so as to facilitate the participation of LSA concerns;

(4) Include the Utilization of Labor Surplus Area Concerns clause in subcontracts that offer substantial LSA subcontracting opportunities; and

(5) Maintain records showing (i) the procedures adopted and (ii) the Seller's performance, to comply with this clause. The records will be kept available for review by the FERMCO until the expiration of 1 year after the award of this contract, or for such longer period as may be required by any other clause of this contract or by applicable law or regulations.

(c) The Seller further agrees to insert in any related subcontract that may exceed \$500,000 and that contains the Utilization of Labor Surplus Area Concerns clause, terms that conform substantially to the language of this clause, including this paragraph (c), and to notify FERMCO of the names of subcontractors.

F.4 FAR 52.222-28 EQUAL OPPORTUNITY PREAWARD CLEARANCE OF SUBCONTRACTS (APR 1984)

Notwithstanding the clause entitled "Subcontracting," the Seller shall not enter into a first-tier subcontract for an estimated or actual amount of \$1 million or more without obtaining in writing from FERMCO a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

F.5 FAR 52.230-5 ADMINISTRATION OF COST ACCOUNTING STANDARDS (AUG 1987)

NOTE: This clause is applicable only if F.6 or F.7 is applicable.

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Seller shall take the steps outlined in (a) through (f) of this clause:

(a) Submit to FERMCO a description of any accounting change, the potential impact of the change on contracts containing a CAS clause, and if not obviously immaterial, a general dollar magnitude cost impact analysis of the change which displays the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed-fee,

etc.) and other Seller business activity. As related to CAS-covered contracts, the analysis should display the potential impact of funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required to comply with a new CAS in accordance with subparagraphs (a)(3) and subdivision (a)(4)(i) of the CAS clause, within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (a)(4)(iii) of the CAS clause or with subparagraph (a)(3) of the Disclosure and Consistency of Cost Accounting Practices clause, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the CAS clause or by subparagraph (a)(4) of the Disclosure and Consistency of Cost Accounting Practices clause, within 60 days (or such other date as may be mutually agreed to) after the date of agreement of noncompliance by the Seller.

(b) Submit a cost impact proposal in the form and manner specified by FERMCO within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. If the cost impact proposal is not submitted within the specified time, or any extension granted by FERMCO, an amount not to exceed 10 percent of each payment made after that date may be withheld until such time as a proposal has been provided in the form and manner specified by FERMCO.

(c) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the CAS clause or with subparagraphs (a)(3), (a)(4), of the CAS Disclosure and Consistency of Cost Accounting Practices clause.

(d) For all subcontracts subject either to the CAS clause or to the Disclosure and Consistency of Cost Accounting Practices clause--

(1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and

(2) Include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Seller's cognizant contract administration office for transmittal to the contract administration office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Seller making the award.

(iv) Any changes the subcontractor has made or proposes to make to accounting practices that affect contracts or subcontracts containing the CAS clause or Disclosure and Consistency of Cost Accounting Practices clause, unless these changes have already been reported.

If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.

(e) Notify FERMCO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this Seller's price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the contract appropriately.

(f) For subcontracts containing the CAS clause, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

F.6 FAR 52.230-2 (48CFR 9903.210-4) COST ACCOUNTING STANDARDS (CAS) (APR 1991)

NOTE: This clause is applicable to negotiated contracts unless exempted under 48 CFR 9903.201-1.

(a) Unless the contract is exempt under 9903.201-1 and 9903.201-2, the provisions of 9903 are incorporated herein by reference and the Seller in connection with this contract, shall—

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Seller's cost accounting practices as required by 9903.202-1 through 9903.202-5 including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Seller and which contain a Cost Accounting Standards (CAS) clause. If the Seller has notified FERMCO that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the disclosure Statement shall be protected and shall not be released outside of FERMCO or the Government.

(2) Follow consistently the Seller's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract, and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in part 9904, in effect on the date of award of this contract or, if the Seller has submitted cost or pricing data, on the date of final agreement on price as shown on the Seller's signed certificate of current cost or pricing data. The Seller shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Seller. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) (i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Seller is required to make to the Seller's established cost accounting practices.

(ii) Negotiate with FERMCO to determine the

terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of this subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by FERMCO.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subparagraph (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Seller or a subcontractor fails to comply with an applicable Cost Accounting Standard or to follow any cost accounting practice consistently and such failure results in any increased costs paid by FERMCO. Such adjustment shall provide for recovery of the increased costs to FERMCO together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period from the time the adjustment is effected. In no case shall FERMCO recover costs greater than the increased cost to FERMCO, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Seller made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to FERMCO.

(b) If the parties fail to agree whether the Seller or a subcontractor has complied with an applicable CAS in Part 9904 or a CAS rule or regulation in Part 9903 and as to any cost adjustment demanded by FERMCO, such failure to agree will continue a dispute under the Disputes clause of this contract.

(c) The Seller shall permit any authorized representatives of FERMCO to examine and make copies of any of the contract-related documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Seller shall include in all negotiated subcontracts which the Seller enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontract's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated subcontracts in excess of \$500,000 where the price negotiated is not based on—

(1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated contracts or subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201-1.

F.7 FAR 52.230-3 (48CFR 9903.201-4C) DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (AUG 1992)

NOTE: This clause is applicable to negotiated contracts unless exempted under 48 CFR 9903.201-2 (b) "modified coverage".

(a) The Seller, in connection with this contract, shall—

(1) Comply with the requirements of 48 CFR, Subpart 9904.401. Consistency in Estimating, Accumulating, and Reporting Costs, and 48 CFR, Subpart 9904.402. Consistency in Allocating Costs Incurred for

the Same Purpose, in effect on the date of award of this contract as indicated in 48 CFR, part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR subpart 9903.202-1 through 9903.202-5. If the Seller has notified FERMCO or the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government or FERMCO.

(3) (i) Follow consistently the Seller's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Seller, and the Seller agrees to negotiate with FERMCO or the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Seller shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in CFR, subpart 9903.201-6(b), that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by FERMCO.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Seller or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by FERMCO. Such adjustment shall provide for recovery of the increased costs to FERMCO together with interest thereon computed at the rate of interest established under the Internal Revenue code of 1986 (26 U.S.C. 6621), from the time the payment by FERMCO was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Seller has complied with an applicable CAS, rule, or regulation as specified in 48 CFR, parts 9903 and 9904 and as to any cost adjustment demanded by FERMCO, such failure to agree will constitute a dispute under the Disputes clause of this contract.

(c) The Seller shall permit any authorized representatives of the government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Seller shall include in all negotiated subcontracts, which the Seller enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that-

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR, subpart 9903.201 is required to follow all CAS, the clause entitled "Cost Accounting Standards," set forth in FAR 52.230-2, shall be inserted in lieu of this clause; or

(2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000 where the price negotiated is not based on-

(i) Established catalog or market prices of

commercial items sold in substantial quantities to the general public; or

(ii) Price set by law or regulation; or

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR, Subpart 9903.201-1.